

Exhibit H



JASON C. LO, SBN 219030
jlo@gibsondunn.com
MATTHEW BENJAMIN (*pro hac vice*)
mbenjamin@gibsondunn.com
RAYMOND A. LAMAGNA, SBN 244821
rlamagna@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

Attorneys for Plaintiff Netlist Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

NETLIST INC., a Delaware
corporation,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO.,
LTD., a Korean corporation,

Defendant.

CASE NO. 8:20-cv-993-MCS (ADS)

**DECLARATION OF PAIK KI HONG
IN SUPPORT OF NETLIST INC.'S
PARTIAL MOTION FOR SUMMARY
JUDGMENT**

DECLARATION OF PAIK KI HONG

I, Paik Ki Hong, declare:

1. I am submitting this declaration in support of Netlist, Inc.'s ("Netlist") Motion for Partial Summary Judgment. I have personal knowledge of the matters stated here and I could and would testify under oath to them if needed.

2. I am Executive Vice President and Chief Operating Officer at Netlist, Inc. ("Netlist"). Since at least 2015, I have been personally involved with and overseen the procurement of NAND and DRAM products from suppliers, including from Samsung. As a result, I have personal experience, involvement in, and knowledge of Netlist's process of purchasing supply directly from Samsung and in the secondary market.

3. Netlist and Samsung entered into a Joint Development and License Agreement ("JDLA") in November 2015 in which Samsung agreed to supply NAND and DRAM to Netlist at Netlist's request and at a competitive price. After signing the JDLA, Samsung routinely supplied Netlist's needs for Samsung NAND and DRAM products per Netlist's requests. Overall, our orders and fulfillment by Samsung went smoothly, and continued to increase rapidly throughout 2016 and 2017. During this period, Samsung reasonably complied with our requests and delivered supply consistent with our forecasts and purchase orders, despite periods of chip shortages. But in May 2017, Samsung suddenly stopped agreeing to support our NAND and DRAM product requests and started refusing to allow Netlist to submit purchase orders for such products.

4. Before Samsung unilaterally informed Netlist that its allocation would be cut to zero in May 2017, the purchase process generally worked as follows: On a regular basis, Netlist would provide Samsung with forecasts showing the amount of Samsung product it would need going forward. Our forecasts were detailed and included line items with particular SKU numbers, volumes, and delivery dates for the amount of Samsung NAND and DRAM we required based on specific customer needs. Samsung would then allow us to place purchase orders consistent with our forecasts.

1 Thus, for nearly two years, Samsung reasonably complied with our requests and
2 delivered supply consistent with our forecasts and purchase orders.

3 5. The process changed in the second quarter of 2017 when Samsung
4 repudiated its supply obligation. Samsung began to refuse to supply us outright and/or
5 would cancel purchase orders. In particular, after we provided our forecasts, Samsung
6 indicated that it was only willing to fulfill a very limited number of line items, which
7 was substantially less than the quantity we had forecasted and not in compliance with
8 Samsung's supply obligation. We were then forced to place a far more limited
9 purchase order per Samsung's response that limited the quantity of product we could
10 order. If Samsung followed through on our purchase order at all, it would deliver the
11 limited amount of NAND and DRAM products we were allowed to submit an order
12 for. Moreover, Samsung frequently failed to follow through even on the purchase
13 orders it had approved (the ones with the quantity already limited by Samsung that
14 were already not in compliance with Samsung's supply obligation) and instead
15 required Netlist to cancel purchase orders it had already placed.

16 6. Netlist only purchased Samsung NAND and DRAM on the secondary
17 market from sellers other than Samsung when Samsung refused to fulfill our requests.
18 That is because, among other reasons, Samsung products sourced from a third-party
19 middleman cost more than the same products purchased directly from Samsung, are
20 often of inferior quality, and take significantly more time, effort, and logistical
21 coordination by Netlist to procure. For example, it is nearly impossible for a single
22 third-party middleman to supply 1,000 pieces of Samsung product in a single purchase.
23 Thus, if Samsung refused to fulfill an order for 1,000 pieces of product, Netlist was
24 forced to try and cover the shortfall from multiple different suppliers. This required
25 substantially more involvement and investment from my team and me than if we were
26 dealing with a single stable supplier because we had to now identify multiple suppliers,
27 deal with invoices from multiple suppliers, coordinate logistics with multiple suppliers,
28 and pay separate shipping costs for multiple shipments—all in addition to paying

1 higher prices than if we had been able to purchase Samsung NAND and DRAM
2 directly from Samsung as agreed. And even then, Netlist was often unable to find
3 sufficient quantities of Samsung product on the secondary market.

4 I certify under penalty of perjury under the laws of the United States that the
5 foregoing statements are true.

6
7 Dated: August 16, 2021

By: 

Paik Ki Hong